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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/615,283	07/08/2003	Mark E. Ragsdale	5649	8216

7590 08/29/2006

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EXAMINER	
COONEY, JOHN M	
ART UNIT	PAPER NUMBER
1711	

DATE MAILED: 08/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/615,283	RAGSDALE ET AL.	
	Examiner	Art Unit	
	John m. Cooney	1711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *15 June 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2 and 17-32* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2 and 17-32* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *0306*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Applicant's arguments filed 6-15-06 have been fully considered but they are not persuasive.

Previous rejections under 35 USC 112 are withdrawn in light of applicants' amendments. However, the following rejection under 35 USC 112 is set forth in light of applicants' amendments:

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 2, and 17-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicants' claims are confusing as to intent because the basis for the amount values can not be determined. There is no polyol component required by the claims for which the parts per hundred parts polyol (php) value can be based.

Additionally -

Claim 1 recites the limitation "the polyol" in line 4. There is insufficient antecedent basis for this limitation in the claim.

The following is set forth under 35 USC 103 is set forth:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 2, and 17-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gelbin(6,569,927) in view of Mccullough, Jr.(6,022,946).

Gelbin discloses a stabilizing additive blend for stabilizing polymers comprising sterically hindered phenol antioxidants, secondary aromatic amine antioxidants, and lactone antioxidants as claimed (see column 3 line 44 - column 4 line 54, as well as, the entire document).

Gelbin differs from applicants' claims in that benzotriazole compounds are not required in the stabilizing blends. However, Mccullough, Jr. discloses employment of an exemplified Tinuvin 327 benzotriazole compound of applicants' invention employed in antioxidant stabilized polymer compositions (see column 11 lines 62-63, as well as, the entire document) for the purpose of providing UV stabilization to the compositions formed. Accordingly, it would have been obvious for one having ordinary skill in the art to have employed the benzotriazole UV stabilizer compound of Mccullough, Jr. in the stabilizing additive blends of Gelbin for the purpose of imparting UV stabilizing effects to the polymers treated in order to arrive at the products of applicants' claims with the expectation of success in the absence of a showing of new or unexpected results.

Although the combination of teachings does not recognize employment of each additive component in amounts specifically meeting the ranges of amount values as claimed, it is held that control for the purpose of imparting their result effective effect is evident and operation within the combination of teachings to achieve their combined result effective effect would have been obvious to one of ordinary skill in the art. Normally, changes in result effective variables are not patentable where the difference involved is one of degree, not of kind; experimentation to find *workable* conditions generally involves nor more than the application of routine skill in the art of chemical engineering. *In re Aller* 105 USPQ 233. Similarly, the determination of *optimal* values within a disclosed range is generally considered obvious. *In re Boesch* 205 USPQ 215. Further, a prima facie case of obviousness has been held to exist where the proportions of a reference are close enough to those of the claims to lead to an expectation of similar properties. *Titanium Metals v Banner* 227 USPQ 773. **(see also MPEP 2144.05 I).**

Applicants' arguments have been considered, but rejection is maintained for the reasons set forth above.

When considering applicants' showing of result the following must be considered:

Result Must Compare to Closest Prior Art:

Where a definite comparative standard may be used, the comparison must relate to the prior art embodiment relied upon and not other prior art – *Blanchard v. Ooms,* 68 USPQ 314 – and must be with a disclosure identical (not similar) with that of said embodiment: *In re Tatincloux,* 108 USPQ 125.

Results Must be Unexpected:

Unexpected properties must be more significant than expected properties to rebut a prima facie case of obviousness. *In re Nolan* 193 USPQ 641 CCPA 1977.

Obviousness does not require absolute predictability. *In re Miegel* 159 USPQ 716.

Since unexpected results are by definition unpredictable, evidence presented in comparative showings must be clear and convincing. *In re Lohr* 137 USPQ 548.

In determining patentability, the weight of the actual evidence of unobviousness presented must be balanced against the weight of obviousness of record. *In re Chupp,* 2 USPQ 2d 1437; *In re Murch* 175 USPQ 89; *In re Beattie, 24* USPQ 2d 1040.

Claims Must be Commensurate With Showings:

Evidence of superiority must pertain to the full extent of the subject matter being claimed. *In re Ackerman,* 170 USPQ 340; *In re Chupp,* 2 USPQ 2d 1437; *In re Murch* 175 USPQ 89; *Ex Parte A,* 17 USPQ 2d 1719; accordingly, it has been held that to overcome a reasonable case of prima facie obviousness a given claim must be commensurate in scope with any showing of unexpected results. *In re Greenfield,* 197 USPQ 227. Further, a limited showing of criticality is insufficient to support a broadly claimed range. *In re Lemin,* 161 USPQ 288. See also *In re Kulling,* 14 USPQ 2d 1056.

It is not seen that applicants have demonstrated a clear and convincing showing of new or unexpected results commensurate in scope with the scope of applicants' claims which are attributable to either employment of the benzotriazole component and/or the relative amounts as claimed.

As to results which might be attributable to employment of benzotriazole, adequate comparison between additive compositions with benzotriazole versus compositions without benzotriazole is not seen to be evident.

Additionally, applicants' have not clearly and convincingly demonstrated that their showings are, in fact, unexpected and/or that how the limited showings of results are to

be construed as being commensurate in scope with the scope of the claims as they now stand. These requirements are not seen to be met by the current evidence of record.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Cooney whose telephone number is 571-272-1070. The examiner can normally be reached on M-F from 9 to 6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck, can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

JOHN M. COONEY, JR.
PRIMARY EXAMINER
Group 1700